could more clearly embrace all wives of naturalized citizens than that used. It cannot be reasonable, then, to assume that Congress has, through mere inadvertence, used language in disregard of a distinction laid down by itself in a legislative enactment. And there is no indication, in the clause on which the petitioner's claim was based, of any intention to restrict the operation of the clause in any way. Furthermore, the first clause groups together "aliens" who "shall have been naturalized or shall have taken up permanent residence in this country," and the fair inference from this would be that the provisions of the section were intended to apply to all wives of husbands permanently settled here. In no part of the section, then, can an intention be discovered to limit the scope of its provisions to such wives as become naturalized through the naturalization of their husbands. So the conclusion is inevitable that the court's construction amounts to the insertion of qualifying words not found in the statute as enacted, and at variance with the indicated legislative intention.

A. R. C.

THE POWERS AND CONSTITUTIONALITY OF THE UNITED STATES RAILROAD LABOR BOARD.—A recent decision of an Illinois Federal District Court [1] is of legal and public interest in that it construes and affirms the constitutionality of the Act of Congress [2] which created the United States Railroad Labor Board. The question arose under a dispute as to the powers of the Board under Section 301 of the Transportation Act of 1920, which provides that all disputes between carriers and employees tending to the interruption of the operation of carriers shall, if possible, be decided in conference between representatives of both parties. The Labor Board asserted the right to control the selection of these conferees, claiming the right under Section 308 (4), which provides that "The Labor Board may make regulations necessary for the efficient execution of the functions vested in it by this title." The Pennsylvania Railroad Company sought to enjoin the Board and its members from exercising that right, and also from functioning as a Board generally, contending that the act is unconstitutional if, and in so far as, it attempts to impose compulsory arbitration. The Board moved to dismiss the bill, contending (1) that it is an administrative arm of the government over which the courts have no jurisdiction, and (2) that the Board had the power exercised by it. The court denied the motion to dismiss.

Four questions were presented to the court:

(1) Can the Labor Board be sued in a Federal court? It was held that the Labor Board, by analogy to the Interstate Commerce

[1] Penna. R. R. Co. v. U. S. R. R. Labor Board, *et al.*, U. S. Dis. Ct., Northern District of Illinois. In Equity, No. 2516. Not yet reported.

[2] Transportation Act of 1920, 41 Stats. at L. 457.

Commission which was created by language similar to that which created the Labor Board, is a body corporate subject to the jurisdiction of the Federal courts, and may sue or be sued.

(2) Does the Labor Board have the right to control the selection of conferees in the initial conferences mentioned in Section 301 of the act? The court held that it does not have this right. This was not one of the Board's functions. The purpose of the section was to leave to the carrier and its employees full liberty to get together in their own way.

(3) Does the act provide for compulsory arbitration? The court held that it does not, for the decisions are not binding or enforceable. They are only advisory, except in so far as their publication may cause public opinion to enforce them. At the end of the opinion, however, the court intimates that even if the act did provide for compulsory arbitration, it would not be unconstitutional on that ground.

(4) In so far as the act provides for settling disputes and determining what is a reasonable wage, is it within the constitutional power of Congress to regulate commerce? The court held that it is. The whole fabric of the nation's commerce is dependent upon the railroads. Since the "power to regulate commerce is a power to prescribe rules by which commerce is to be governed," [3] then Congress must have the power to prescribe every regulatory or governing measure necessary to keep the commerce of this country alive and the common carriers going concerns. "If the common carrier system of this country may lawfully be stopped for one hour by the carrier or by the employees, organized or unorganized, not by reason of any necessity in the business of common carrying, but because either party wills it, or through the disagreement of the parties, then it may be stopped for the same reason or for no reason at all for an indefinite time or perpetually, and the constitutional power of Congress would be as impotent and useless as a dead hand upon the ship's rudder in a storm." The court said that the case of Wilson v. New,[4] concerning the Adamson Act,[5] supports the power of Congress to prescribe compulsory arbitration or to fix wages, and that the objections of the dissenting justices in that case that the fixing of wages on an eight-hour basis was an arbitrary exercise of power is not present in this case where careful investigation and consideration by a well-qualified Board are provided.

The case is interesting for several reasons. In the first place, it is the first decision having to do with the Labor Board. It is also noteworthy that a court of equity took jurisdiction. In addition to the objection which was answered by the court in its opinion, *viz.*,

[3] Gibbons v. Ogden, 22 U. S. 1, 195 (1824).

[4] 243 U. S. 332, 61 L. Ed. 755 (1917).

[5] Act of Sep. 3, 1916, 39 Stat. at L. 721.

that the Board could not be sued as a corporate body, is the question as to what property right of the Pennsylvania Railroad Company was at stake in this case, for there is the general rule that equity will not take jurisdiction unless a right of property is involved. If the decisions of the Board are not binding, what property right of the company could be lost by the Board functioning? It may be that the good will of the public would be lost by the publication of a decision adverse to the company. However, the opinion does not refer to this question. A third point of interest in the case is that the court construes the act to restrict the Board to cases brought before it. The Board may not of its own initiative step in and assume the control of every step in the settlement of disputes. Finally, the case is instructive in that it decides that it is constitutional for Congress, under the Commerce Clause, to regulate railroad wages through a permanent Board. This is a new question. The only previous Supreme Court decision on the point is Wilson v. New,[6] where the Adamson Act was upheld as intended to take care of a temporary emergency. If the decision is sustained by the Supreme Court it will establish the landmark of a new departure in our constitutional law.

L. H. McK.

DENIAL OF TRIAL BY JURY IN NEWLY CREATED OFFENSES.—Is the convenience and benefit to the public resulting from a prompt and inexpensive trial and punishment of violations of police power regulations more important than the prejudice to the individual resulting from his being deprived of the safeguard of indictment before having to answer and of trial by jury when held to answer? This question confronted the New Jersey Court of Errors and Appeals, when in a recent case [1] they were called upon to decide the constitutionality [2] of the Prohibition Enforcement Act [3] of New Jersey, which is commonly called the Van Ness Act.

The act [4] was unique in that it made Judges of the Courts of Common Pleas, and, in certain circumstances, the Justices of the Supreme Court, magistrates, and required them to enforce the act in certain proceedings. It made any person violating its provisions a "disorderly person" triable by a magistrate without a jury, and, on conviction, liable to sentence of confinement in the workhouse,

[6] Note 4, *supra.*

[1] State v. Katz *et al.*—unreported—Court of Errors and Appeals, New Jersey, November Term, decided, Feb., 1922.

[2] The Act was declared unconstitutional by a vote of the court on all the judgments under review. It was declared constitutional in respect to the denial of the right to trial by jury, which was one of the grounds of appeal, by a vote of 6 to 5.

[3] Act of March 29th, 1921, chap. 103, N. J. Laws 1921.

[4] State v. Katz, Note 1, *supra.*